

January 7, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

— \* —  
JOHN CORNYN  
Attorney General

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P.O. Box 12548  
Austin, Texas  
78711-2548

(512) 463-2100  
www.oag.state.tx.us

Mr. Richard M. Abernathy  
Abernathy, Roeder, Boyd & Joplin  
101 East Davis Street  
McKinney, Texas 75069-1210

OR99-0022

Dear Mr. Abernathy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121165.

The City of Wylie (the "city") received a request for all citations and notices of violation written by any city or fire department inspector during a specific time period. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the sample documents.<sup>1</sup>

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

In this instance, you have demonstrated that the city is currently involved in litigation. *Payne v. City of Wylie, et al.*, No. 4:98cv238, (E. D. Tex., filed Aug. 25, 1998). You have not, however, demonstrated that the requested information relates to the pending litigation. *Texas Legal Found.*, 958 S.W.2d at 483. The requested information must therefore be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being more prominent.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 121165

Enclosures: Submitted documents

cc: Mr. Lanny Payne  
3010 W. FM 544  
Wylie, Texas 75098  
(w/o enclosures)